

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA,

v.

HERNAN ANDREAS RIVERA-PEREZ,
Defendant.

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3:07-CR-0387-M(02)

**RECOMMENDATION REGARDING MOTION TO PROCEED
IN FORMA PAUPERIS ON APPEAL**

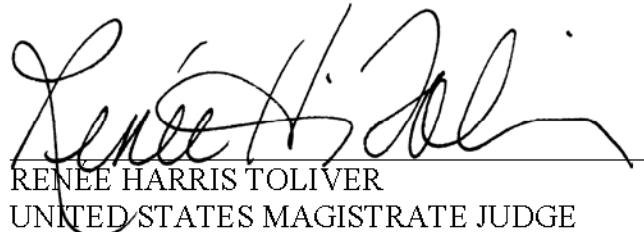
Before the Court is Defendant's motion to proceed *in forma pauperis* on appeal filed December 22, 2015. Doc. 309. Defendant appeals from the October 29, 2015 order denying his motion to reduce sentence under the 2014 Drug Guidelines Amendment. Doc. 304. Upon consideration, it is recommended that the Court deny the motion to proceed *in forma pauperis* on appeal and certify, pursuant to FED. R. APP. P. 24(a) and 28 U.S.C. § 1915(a)(3), that the appeal is not taken in good faith.

It was well within the Court's discretion to grant or deny a motion for reduction based on the 2014 Drug Guidelines Amendment. The Court exercised its discretion to deny the reduction in this instance. A further review of the record reflects that on October 16, 2015, only two weeks before entry of the order denying a reduction under the 2014 Drug Guidelines Amendment, the Court granted a substantial reduction based on the government's motion for a reduction of sentence. Based on the above, the undersigned recommends that the appeal presents no legal points of arguable merit and is therefore frivolous.

Although this appeal should be certified as not taken in good faith under 28 U.S.C. § 1915(a)(3) and FED. R. APP. P. 24(a)(3), the defendant may challenge this finding by filing a separate motion to proceed in forma pauperis on appeal with the Clerk of Court, U.S. Court of

Appeals for the Fifth Circuit, within 30 days of the District Court's order adopting this recommendation.

SIGNED January 4, 2016.



RENEE HARRIS TOLIVER
UNITED STATES MAGISTRATE JUDGE